

ROSARIO OLIVEROS, ET AL., PETITIONERS, VS. HON. JUDGE JOSE QUERUBIN, ETC., RESPONDENT.*G.R. No. L-16905. November 29, 1965*

Ponente: MAKALINTAL, J.

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This is a petition for a writ of mandamus to compel respondent Judge Jose Querubin of the Court of First Instance of Occidental Negros to approve petitioner's appeal in Civil Case No. 3742 of said court.

Petitioners received a copy of the decision in the case on March 16, 1957. On April 3, 1957 they moved for reconsideration and new trial. The motion was denied and they were notified of the denial on April 13. On April 15 they filed a motion to appeal as paupers, with a request for an extension of fifteen days within which to file the record on appeal. On April 23 they filed another motion to attach to the record certain exhibits they had offered during the trial but which were rejected by the court. On April 27 the court issued two orders denying the prayers in both motions except that concerning the fifteen-day extension, which was granted. Petitioners received copies of those orders on April 30. On the following May 8 they moved for reconsideration, which was denied. They received a copy of the resolution of denial on May 20.

On May 28, 1957 petitioners filed in this Court a petition for certiorari and mandamus (105 Phil. 930, Rosario Oliveros, et al. vs. Teodoro Oliveros, et al.) asking that the two orders of April 27, 1957 be set aside. In its decision promulgated October 20, 1959, this Court set aside the said orders and directed respondent Judge "to allow the petitioners to appeal as paupers in Civil Case No. 3742 and to attach to the records thereof the exhibits mentioned in their motion dated April 23, 1957." On December 9, 1959, acting on a motion of petitioners to implement the decision of this Court, respondent Judge issued an order allowing them to appeal as paupers and directing the Clerk of Court to attach the said exhibits to the record. Petitioners received a copy of the order If on December 14, 1959 and filed their record on appeal on January 7, 1960. Upon motion of the defendant in the case, however, respondent Judge dismissed the appeal on the ground that it had been filed out of time. Reconsideration of the dismissal was denied, and petitioners again came to this Court with the present petition for mandamus.

Resolving the question in the light most favorable to I petitioners, the following computation shows that the petition is without merit.

March 16, 1957

- notice of decision

April 3, 1957

- motion for reconsideration

18 days

April 13, 1957

- notice of denial of motion

April 15, 1957

- motion to appeal as paupers, with request for extension

2 days

April 30, 1957

- notice of denial of motion to appeal as paupers and motion to attach exhibits (filed April 27)

May 8, 1957

- motion for reconsideration

8 days

May 20, 1957

- notice of denial of motion for reconsideration

May 28, 1957

- petition for certiorari and mandamus (G.R. No. L-12466)

8 days

Total-36 days

The lower court having granted an extension of 15 days to petitioners, the entire period within which to appeal was 45 days. Deducting the period of 36 days already consumed, 9 days still remained as of the date petitioners came to this Court in G. R. No. L-12466.

Assuming¹ that the period commenced to run again only on December 14, 1959, when petitioners received the order of respondent Judge implementing the decision of this Court in said case, the last day to perfect the appeal was December 23, 1959. Petitioners filed their record on appeal only on January 7, 1960, which was well beyond the time limit.

Petitioners seem to be of the opinion that the period to appeal started only from December 14, 1959, when they received a copy of the implementing order of respondent Judge. That opinion is incorrect. Their right to appeal'

did not proceed from this Court's decision, much less from said implementing order, and neither of them operated to wipe out the time that had already elapsed since petitioners received a copy of the lower court's decision from which they were appealing. All that this Court decided was that petitioners could appeal as paupers and that their exhibits should be attached to the record. The assumption, of course, is that such appeal should be perfected within the proper period.

Wherefore, the writ prayed for is denied, with costs against petitioners.

Bengzon, C. J., Bautista Angelo Concepción, Reyes, J.B.L., Dizon, Bengzon, J. P., and Zaldivar, JJ., concur.

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